

In The United States Court of Federal Claims

No. 10-156L

(Filed: July 27, 2010)

MCCLURG FAMILY FARM, LLC, et al,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

ORDER

The attached class notice, which generally reflects the content of a draft notice jointly submitted by the parties, is hereby approved and shall be distributed to potential class members.

IT IS SO ORDERED.

s/ Francis M. Allegra
Francis M. Allegra
Judge

UNITED STATES COURT OF FEDERAL CLAIMS

NOTICE OF OPPORTUNITY TO PARTICIPATE IN CLASS ACTION

A court has authorized this Notice. This is not a solicitation from a lawyer.

TO: All property owners who had an ownership interest on October 24, 2008 in lands adjoining and/or underlying that portion of the railroad corridor between milepost 215.4 west of Mackenzie Junction to milepost 252.3 west of Braaksma, in Dickinson and Osceola Counties, Iowa.

BASIC INFORMATION

1. Why did I get this notice?

Local property records show that you own or previously owned a parcel of property that abuts or is traversed by a segment of the railroad corridor or right-of-way between milepost 215.4 west of Mackenzie Junction to milepost 252.3 west of Braaksma, in Dickinson and Osceola Counties, Iowa, a distance of approximately 36.9 miles (Railroad Line).

The purpose of this Notice is to inform you of a class action lawsuit (Class Action) brought against the United States by property owners adjacent to the Railroad Line (Named Plaintiffs), to advise you of how your rights may be affected by the Class Action, and to instruct you on the procedure to opt into this Class Action, if you choose to do so. Your options are explained in this notice. **To ask to be included, you must complete and hand deliver, mail, or FAX an Opt-In Notice (form attached) so that it is received on or before December 10, 2010 (more instructions on this are below).** Plaintiffs' lawyers must prove the claims against the United States. If money is obtained from the United States, you will be notified about how to receive a share.

Judge Francis M. Allegra, the Judge of the United States Court of Federal Claims assigned to this case, has ordered the publication and distribution of this Notice.

2. What is this lawsuit about?

On March 12, 2010, the Named Plaintiffs filed their Complaint against the United States in the United States Court of Federal Claims for themselves and on behalf of a proposed group or "class" of similarly situated property owners. The lawsuit alleges that the Surface Transportation

Board (STB) issued a Notice of Interim Trail Use (NITU) concerning the Railroad Line that authorized the railroad company previously operating the line – General Railway Corporation d/b/a Iowa Northwestern Railroad (“IANW”) – to enter into a railbanking agreement with The Iowa Trails Council. The lawsuit alleges that the STB’s issuance of the NITU interfered with property interests recognized under Iowa law and, therefore, constitutes a taking of private property for public use pursuant to the Fifth Amendment to the United States Constitution.

Defendant, the United States, denies that the named Plaintiffs or potential class members are entitled to compensation.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class Representatives” (in this case, McClurg Family Farm, LLC, Jared and Mary Herbert, Theodore Pranger and Marlin and Mary Laverman) sue on behalf of other people who have similar claims. The people together are a “Class” or “Class Members.” The people who sued – and all Class Members like them – are called the “Plaintiffs.” In this case, the United States of America is the Defendant. One court will resolve the issues for everyone who asks the Court to be included in the Class by submitting an Opt-In Notice form. Those individuals who do not submit an Opt-In Notice form will be excluded from the Class in this case.

4. Why is this lawsuit a class action?

The Court decided that this lawsuit can be a class action and move towards a trial because it meets the requirements of Rule 23 of the Rules of the United States Court of Federal Claims. On July 27, 2010, the Court ruled that this case could be maintained as a class action and determined the following:

The potential Class is so numerous that joinder of all members is impracticable;
There are questions of law and fact common to the class;
McClurg Family Farm, LLC, Jared and Mary Herbert, Theodore Pranger and Marlin and Mary Laverman’s claims are typical of the claims of the rest of the Class;
McClurg Family Farm, LLC, Jared and Mary Herbert, Theodore Pranger and Marlin and Mary Laverman, and the lawyers representing the Class will fairly and adequately represent the interests of the Class;
The common legal questions and facts predominate over any questions affecting only individual class members; and
This class action will be more efficient than having many individual lawsuits.

For more information, see the Court’s July 27, 2010, Order, available at the Court or through the Public Access to Court Records (PACER) system, available at www.pacer.psc.uscourts.gov.

5. Am I an eligible class member?

You are receiving this notice from the Court because it has been determined based on a review of public records that you may be an eligible class member. Eligible class members are those who, on October 24, 2008, owned an interest in land constituting part of the Railroad Line.

6. How can I join the Class Action?

To be considered eligible to join the Class Action, you must enroll in the action. To enroll, you must mail, fax or deliver a completed Opt-In Notice form to Class Counsel. The Opt-In Notice form is attached to this Notice. By signing and submitting this enrollment form, you are representing that you, or the entity you represent (such as a trustee of a trust or as an officer of a corporation), owned land on October 24, 2008, that adjoins or underlies the Railroad Line, and that you wish to join the Class Action to have your potential claim pursued.

Your claim will be deemed filed timely if Class Counsel receives your enrollment form on or before December 10, 2010.

7. What happens if I submit an Opt-In Notice form?

If you become a class member, a judgment in this case will be binding on you, meaning you could not pursue your own separate lawsuit using your own attorney.

You may choose not to join the Class Action. If you wish to pursue your claim separately from the Class Action, please be aware that the last day to file your own action is October 24, 2014. If you become a class member, your interests will be represented by the Named Plaintiffs and Class Counsel. The parties will research your claim and, ultimately, the Judge will rule on whether you are entitled to just compensation and, if so, the amount of just compensation due to you. A judgment in this case will be binding on you, meaning you could not pursue your own separate lawsuit using your own attorney.

8. What happens if I do not submit an Opt-In Notice form?

If you do not submit an Opt-In Notice form before December 10, 2010, you will be barred from participating as a Class Member in this case and you will not receive any monetary recovery from either a trial or settlement. However, you retain the right to sue the United States separately about the same legal claims in this lawsuit and you will not be legally bound by the Court's judgment in this class action. If you decide to pursue your claim independently, outside this class action, we encourage you to do so immediately and consult with your counsel immediately because certain statutes of limitations may bar or limit your claims. You are entitled to enter an appearance in this matter through private counsel if you desire.

9. What if I no longer own the property that was along the Railroad Line?

Whether you are still the owner or sold the property some time after October 24, 2008 has no

impact on your eligibility. However, you must have owned the property on October 24, 2008 to be considered eligible.

10. Will this case affect the recreational trail?

The Class Action seeks just compensation for an alleged taking. The Class Action does not challenge the propriety or legitimacy of the recreational trail. The only remedy available to class members if the Court concludes that a taking has occurred under the Fifth Amendment is a monetary judgment against the United States for just compensation of the property interest taken.

11. Do I have a lawyer in this case?

The Court decided that Thomas S. Stewart, Esq. of the law firm Baker Sterchi Cowden & Rice LLC, 2400 Pershing Road, Suite 500, Kansas City, MO 64108, is qualified to represent you and all Class Members, and is called “Class Counsel.” More information about Mr. Stewart’s law firm, its practices and its lawyers’ experience is available at www.bscr-law.com.

12. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf, but you are permitted to hire your own lawyer if you would like to do so. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you. However, if you choose to hire your own lawyer, you will personally have to pay that lawyer.

13. How will the lawyers be paid?

If Class Counsel get money for the Class, either as a result of trial or settlement, they may ask the Court for their fees and expenses. You will not have to pay these fees and expenses. If the Court grants Class Counsel’s request, the fees and expenses would either be deducted from any money obtained for the Class or paid separately by the United States. If the Class Counsel’s fees and expenses are paid out of the money obtained for the Class, there will be a reduction in the amount available for distribution to Class Members, and it may reduce the amount of money you may be awarded. If there is no recovery in this case, you will not be required to pay any attorneys’ fees or costs to Class Counsel. In no event will you be asked to pay Class Counsel directly (“come out of pocket”) to pay their fees and costs. However, as mentioned in question 12, if you choose to hire your own lawyer, you will personally have to pay that lawyer.

14. How and when will the court decide who is right?

As long as the case is not resolved by a settlement or otherwise, Class Counsel will have to prove the Plaintiffs’ claims at trial. The Court will schedule a trial that likely will be held in Iowa, at a Federal courthouse to be determined. During the trial, the Judge will hear all the evidence to

help him reach a decision about whether the Plaintiffs or Defendant are right about the claims in the lawsuit. There is no guarantee that the Plaintiffs will win, or that they will get any money for the Class.

15. Will I get money after the trial?

If the Plaintiffs obtain money as a result of the trial or a settlement, you will be notified about how to participate. We do not know how long this will take.

16. Do I have to come to the trial?

You do not need to attend the trial. Class Counsel will present the case for Plaintiffs, and the United States will present the defenses. You or your own lawyer are welcome to come at your own expense.

17. Where is the form for me to fill out to apply to join the Class Action?

If you wish to join this Class Action, please complete the Opt-In Notice form on the next page, and then mail it to the address provided at the bottom of the Claim Form on the next page, or fax it to the identified fax number, or you may hand deliver it to Class Counsel. Please ensure that Class Counsel receives your enrollment form by Friday, **December 10, 2010**, if you wish to participate in this class action.

18. Are more details available?

The pleadings and other records in this lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the United States Court of Federal Claims, and are available over the Internet through the PACER website described in paragraph 4.

The address for the Court is:

United States Court of Federal Claims
717 Madison Place, N.W.
Washington, D.C. 20005.

For more information about this lawsuit, you may contact Class Counsel. The address for Class Counsel is:

Thomas S. Stewart, Esq.
Baker Sterchi Cowden & Rice LLC
2400 Pershing Road, Suite 500
Kansas City, MO 64108

The telephone number to reach Class Counsel is: (816) 471-2121 (Thomas S. Stewart or Elizabeth McCulley).

CLASS ACTION OPT-IN NOTICE FORM

UNITED STATES COURT OF FEDERAL CLAIMS
McClurg Family Farm, LLC, et. al. v. United States
Case No. 10-156L

*Fill out this form completely and legibly. **IT MUST BE MAILED (OR FAXED) TO CLASS COUNSEL AT THE ADDRESS BELOW AND RECEIVED BY DECEMBER 10, 2010.**

I consent to opt-in to the Class Action lawsuit against the United States to assert claims for a taking of private property for public use without just compensation. I owned land on October 24, 2008, that was immediately adjacent to or traversed by the railroad corridor between milepost 215.4 west of Mackenzie Junction to milepost 252.3 west of Braaksma, in Dickinson and Osceola Counties, Iowa.

By signing my name in the space below, I understand that I am consenting to join the collective action of plaintiffs on whose behalf the Named Plaintiffs have alleged the violations described in the accompanying notice. I am also declaring, under penalty of perjury under the laws of the United States and applicable state laws, that I am one of the property owners, or an heir or legal representative of one of the property owners described in the accompanying notice, and that, to the best of my knowledge, I believe I am entitled to a distribution arising out of this lawsuit according to the description of the Government's alleged taking of private property as printed in the accompanying Notice.

Note: If you represent an entity making a claim, such as a corporation, partnership, or trust, please identify the name of that entity in this Opt-In Notice, but sign in your own name as a representative of that entity. If you owned the land with another person or entity, it is only necessary that one of the owners sign this form, but it is helpful if you identify all owners.

Date: _____

Signature: _____

Name: _____

Street Address of Property that is
Next to the Railroad Line: _____

Current Mailing Address: _____

Other contact information (optional):

HOME TELEPHONE:

WORK TELEPHONE:

CELL PHONE:

E-MAIL ADDRESS:

PLEASE RETURN YOUR SIGNED CLAIM FORM TO (a stamped, addressed envelope has been provided for your convenience):

McClurg v. United States Class Action
c/o Thomas S. Stewart and Elizabeth McCulley
2400 Pershing Road, Suite 500
Kansas City, Missouri 64108

You can also fax your signed claim form to: 816-472-0288.